

MEMORANDUM OF LAW

DATE: August 28, 1985

TO: Dave Grim, Property Department

FROM: City Attorney

SUBJECT: Reservation of Right to Require Park Property
in Connection with Subdivisions - Purchase
Price

In connection with the proposed acquisition of a park site pursuant to a subdivision tentative map condition, the City entered into the attached agreement to acquire an 8.53-acre parcel for a neighborhood park. The developer subsequently indicated that the total purchase price would be \$588,634 which included the basic purchase price of \$20,000 per acre plus "improvement costs" in the amount of \$272,480, plus interest in the amount of \$139,956 (see attached).

This office was requested to comment as to the

appropriateness of the proposed purchase price and prepared the attached memorandum of law dated May 7, 1985. Subsequent meetings indicate that the vast majority of the so-called "improvement costs" relate to costs of public improvements which were required to be installed in connection with the subdivision map process. The developer is apparently attempting to allocate a proportionate share of the total cost of the subdivision improvements to the parcel to be acquired by the City.

As stated in the attached memorandum of law, the City's agreement with the developer does not contemplate a purchase price which includes a proportionate share of the cost of the subdivision improvements. If the City were to pay a proportionate share of the subdivision improvement costs it would in fact be acquiring the park property on the basis of the post subdivided land fair market value rather than the statutorily provided "unsubdivided land fair market value." Such a proposal is contrary to the intent of the State legislation and is contrary to the signed agreement between the City and the developer for the City's acquisition of the site.

The only item in the list of "improvement costs" which may be appropriate for payment appears to be the "grading" item involving \$178,502. If City staff requested special additional

grading, which grading was not a requirement under the approved subdivision map, and which grading was specifically needed to enhance the usability of the park parcel, any such grading costs may be the appropriate subject of a proposed reimbursement by the City.

JOHN W. WITT, City Attorney

By

Harold O. Valderhaug

Deputy City Attorney

HOV:ps:263(x043.2)

Attachments

cc Ed Firkins

ML-85-51